IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-11034
Non-Argument Calendar

D. C. Docket No. 98-00963-CR-FAM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LINA PEREZ,

Defendant-Appellant.

Appeals from the United States District Court

For the Southern District of Florida

(December 12, 2000)

Before EDMONDSON, COX and WILSON, Circuit Judges.

PER CURIAM:

Defendant Lina Perez appeals her conviction for conspiring to submit false claims to the United States in violation of 18 U.S.C. § 286. Upon review, we affirm.

BACKGROUND

Perez and twenty-five other defendants were charged with participating in a scheme to defraud the United States through the submission of fraudulent claims for home healthcare services to Medicare. In essence, several of these defendants formed nursing companies that billed licensed home health agencies for healthcare services that were never actually provided. These agencies then submitted the false information to fiscal intermediaries representing Medicare.

The indictment alleged that Perez was involved in this scheme in various capacities, such as providing signatures on fraudulent documents submitted in support of claims for reimbursement and serving as director of nursing for several nursing groups, including one that she formed. A jury convicted Perez of conspiring to submit false claims to the United States, and the district court sentenced her to thirty-six months' imprisonment

followed by three years' supervised release and ordered her to pay restitution.

DISCUSSION

On appeal, Perez argues that: 1) the district court violated her rights to due process and to an impartial jury by refusing to strike a juror for cause; 2) the government failed to prove her guilt beyond a reasonable doubt; and 3) the district court committed plain error by admitting into evidence plea agreements containing references to the willingness of certain witnesses to take polygraph examinations.

A. Refusal to Dismiss Alternate Juror

Perez argues she was denied her constitutional rights to due process and to an impartial jury because the district court declined her request to strike for cause a prospective alternate juror who worked in the property room of the Miami police department. "The decision to strike a prospective juror for cause upon a suggestion of impartiality is within the sound discretion of the trial judge," and this Court "will not overturn that decision absent an abuse of discretion." United States v. Rhodes, 177 F.3 d 963, 965 (11th Cir. 1999).

The district court did not abuse its discretion in this case. The juror in question was an alternate who was discharged before the jury began its deliberations. At any rate, the juror stated during voir dire by the district court that her long-term employment with the police department would not influence her decision and that she could be fair to all of the defendants. Perez can thus claim no harm from the district court's refusal to excuse this juror.

B. Sufficiency of the Evidence

Perez next argues that insufficient evidence exists to support her conviction. We review claims of insufficient evidence de novo, and we "look at the evidence in the light most favorable to the government and accept all of the jury's inferences and determinations of credibility." United States v. Carothers, 121 F.3d 659, 661 (1 lth Cir. 1997).

"To sustain a conviction for conspiracy to defraud the United States, the Government must prove the existence of an agreement to achieve an unlawful objective, the defendant's knowing and voluntary participation in the conspiracy, and the commission of an overt act in furtherance of it." United States v. Suba, 132 F.3 d 662, 672 (11 th Cir. 1998). Perez's specific contention is that the government failed to establish that she

assented to participate in the fraud scheme.

The government presented testimony from witnesses who stated that Perez signed documents related to home nursing services that she never provided, authorized others to sign those documents on her behalf when she was unable to do so, received payment for her signatures, and ultimately established her own nursing company that submitted fraudulent claims to Medicare. In addition, the government presented the testimony of one individual who never received nursing services Perez claimed to have provided. It also offered into evidence checks ' paid to Perez by a nursing group and claims documents bearing her name. We are unable to conclude that this evidence is insufficient to support Perez's conviction for conspiracy to defraud beyond areasonable doubt.

C. Admission of Polygraph Provisions of Plea Agreements

Perez argues that the district court erred by admitting into evidence plea agreements referencing the willingness of four defendants who testified against her to take polygraph tests. Because Perez did not object to this evidence at trial, we review the admission of it for plain error. See United States v. Kramer, 73

F.3d 1067, 1074 (11th Cir. 1996). This review requires us to determine if the alleged error affected "substantial rights," meaning that it "must have affected the outcome of the district court proceedings." United States v. Mitchell, 146 F.3d 1338, 1342-43 (11th Cir. 1998).

This Court has permitted the introduction of the truth-telling provisions of plea agreements to rehabilitate witnesses following attacks on their credibility in either opening argument or on direct examination. See United States v. Cruz, 805 F.2d 1464, 1480 (11th Cir. 1986). Here, Perez in her opening argument attacked the credibility of the witnesses who testified against her, claiming that the plea agreements evidenced their unreliability. Thus, the admission of the polygraph provisions served to properly rehabilitate those witnesses.

Perez argues that the admission of these provisions of the plea agreements was error because it improperly bolstered the witnesses' credibility. See United States v. Hilton, 772 F.2d 783, 785-86 (11th Cir. 1985). Hilton, however, did not involve an attack on credibility prior to the introduction of the plea agreements, and that decision thus does not prevent the introduction of similar evidence under the facts of this case.

Even if the district court's admission into evidence of the polygraph provisions was error, we cannot conclude that it affected Perez's substantial rights. The government's case against Perez did not depend entirely on the testimony of these witnesses. As described above, the testimony of the other defendants was corroborated by documentary evidence linking Perez to the conspiracy, which included checks payable to her and documents bearing her signature. Therefore, the admission of the polygraph provisions did not constitute plain error. For these reasons, the conviction of Perez is

AFFIRMED.